IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SSRI JUSTICE ELIPE DHARMA RAO

WRIT PETITION No. 11402 of 2005

Between:

Smt. Kamjula Sarada, W/o. Kamjula Rama Krishna Reddy,
Aged 26 years, Pandalapadu Gram Panchayath, Kandukur Mandal,
Prakasam District, Andhra Pradesh.

..... PETITIONER

AND

1 The District Panchayath Officer,

Ongole, Prakasam district, Andhra Pradesh.
2 The District Collector (Panchayat Wing),

Ongole, Prakasam District, Andhra Pradesh.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an appropriate Writ or order or direction under Article 226 of the Constitution of India, particularly one in the nature of Writ of MANDAMUS, declaring the proceedings issued by the first respondent herein in ROC.No. 3527/2004 (Pts.) A1/dt. 5-4-2005 and also inaction on part of the first respondent in not considering the explanation submitted by the petitioner dt. 16-4-2005 as unjust, arbitrary and illegal.

Counsel for the Petitioner: MR.Nuthalapati Krishna Murthy

Counsel for the Respondent No.1 & 2: GP for Gram Panchayat and Rural Development

The Court made the following :

ORDER:

The petitioner was elected as Sarpanch of Pandalapadu Gram Panchayat, Kandukur Mandal, Prakasam District during the elections in 2001. While so, the Divisional Panchayath Officer visited the gram panchayat and found that the petitioner has misappropriated certain amounts from SGRY and spent amount from General Fund without following the procedure and, therefore, issued the impugned order prohibiting the petitioner from drawing funds and authorized the Extension Officer (PR & RD) Kandakur to operate on the General SGRY, EFC, SFC Funds of Pandalapadu Gram Panchayath. Pursuant to the said order, the petitioner submitted explanation on 16.4.2005, which was not considered by the respondents. Consequently, the petitioner preferred an appeal under Sub-Rule (2) of Rule 42 of the Rules issued in GO Ms. No. 30, Panchayath Raj Department Dated 20.1.1995, before the 2nd respondent, and it is pending.

On the other hand, the learned Government Pleader submitted that by virtue of the amendment to Rule 40 by GO Ms. No. 137 Panchayath Raj Department dated 22.3.1996, in place of Executive Authority, Sarpanch was inserted, which reads that *all orders or cheques against the Gram Panchayat funds shall be signed by the Sarpanch of the Gram Panchayat*. Therefore, as the cheque power was given to the Sarpanch, under Sec. 42 of the Act, the District Panchayath Officer is empowered to pass orders. Therefore, when the Government, by virtue of delegated legislation, has amended the Rule incorporating the Sarpanch in place of Executive Authority, with regard to *all orders or cheques against the Gram Panchayath shall be signed by the Sarpanch of the Gram Panchayath*, Rule 42 ought

to have been amended and, therefore, in view of the principle of reading down, the order passed by the first respondent is justified and does not warrant interference. Consequently, the writ petition fails and is accordingly dismissed. No order as to costs.

However, since the petitioner has preferred appeal to the second respondent, which is pending, I deem it appropriate to direct the 2nd respondent to dispose of the same within a period of six weeks from the date of receipt of a copy of this order.

Elipe Dharma Rao, J.

June 13, 2005

MAS.

To

1 The District Panchayath Officer,

Ongole, Prakasam district, Andhra Pradesh.

2 The District Collector (Panchayat Wing),

Ongole, Prakasam District, Andhra Pradesh.

3 2 copies to the Govt. Pleader for Panchayat Raj and Rural Development, A.P. High Court Buildings, Hyderabad.(OUT)

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